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414384—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 573

JAMES W. MURPHY, DOING BUSINESS AS LAFRANCE TOLEDO COMPANY, PETITIONER

v.

JAMES A. BRADY, ACTING COLLECTOR OF INTERNAL REVENUE FOR OHIO (TENTH DISTRICT)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the District Court or by the Circuit Court of Appeals.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 6, 1941 (R. 45–46). Petition for rehearing, filed on June 2, 1941 (R. 47–52), was denied by order entered on June 5, 1941 (R. 53).

The petition for a writ of certiorari was filed August 30, 1941. The jurisdiction of this Court is involved under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, despite the prohibition of Section 3224 of the Revised Statutes, the bill of complaint alleges facts sufficient to warrant a court of equity to enjoin the collection of a Federal tax.

STATUTES INVOLVED

The pertinent statutes will be found in the Appendix, *infra*, pp. 6–8.

STATEMENT

The bill of complaint (R. 1–18) alleges that the petitioner packs and distributes a perfumed water softener which is produced by adding a minute quantity of perfume to tri-sodium phosphate; that the Commissioner of Internal Revenue has held that this product is subject to tax under Section 603 of the Revenue Act of 1932 imposing a tax upon sales of toilet preparations by the manufacturer; that the petitioner has paid the sum of $998.22 as such taxes, for which, on October 5, 1937, he filed a claim for refund; that the Commissioner has assessed against the petitioner the further sum of $4,924.27 as taxes, together with $1,231.07 penalty and $654.93 interest, a total of $6,810.27; that petitioner's product is not taxable under Section 603

and petitioner is not a manufacturer within the terms of the statute. The bill prays for declaratory judgment that petitioner is not a manufacturer, producer, or importer within the meaning of the statute and that his product is not taxable thereunder; that the petitioner have judgment for the tax paid; and that the collection of the tax assessed but not collected be enjoined.

On November 16, 1937, after hearing, the District Court granted a preliminary injunction (R. 21–23). A motion to dissolve the injunction (R. 25–26) and an amended motion to dismiss the bill of complaint (R. 26–27) were filed by the respondent on December 6, 1937. These motions were based upon the ground that the court was without jurisdiction to enjoin the collection of a federal tax and that the bill failed to state facts sufficient to constitute a cause of action.

On March 20, 1939, after hearing, the District Court entered an order sustaining these motions (R. 31). The Circuit Court of Appeals affirmed.

ARGUMENT

1. Section 3224 of the Revised Statutes, now Section 3653, I. R. C. (Appendix, *infra*), prohibits the maintenance of any suit for the purpose of restraining the assessment or collection of a federal tax. *Graham* v. *Du Pont,* 262 U. S. 234; *Bailey* v. *George,* 259 U. S. 16; *Dodge* v. *Brady,* 240 U. S. 122; *Snyder* v. *Marks,* 109 U. S. 189; *Cheat-*

ham v. *United States*, 92 U. S. 85; *State Railroad Tax Cases*, 92 U. S. 575. Nevertheless injunctions have been permitted in several cases where exceptional and extraordinary circumstances were thought to exist. *Miller* v. *Nut Margarine Co.*, 284 U. S. 498; *Allen* v. *Regents*, 304 U. S. 439. Although the dissents in those cases indicate considerable doubt as to the results there reached in ignoring the plain command of Section 3224, those decisions nevertheless have no application here since petitioner has made no showing of exceptional and extraordinary circumstances. While the bill of complaint (R. 7) alleges that the collection of the tax will inflict immediate and irreparable injury to the petitioner, no facts are set forth to sustain that conclusion and to show that petitioner's remedy at law under Section 3226 of the Revised Statutes (Appendix, *infra*) is in any way inadequate. The District Court concluded that no such injury would result and that petitioner's remedy was adequate (R. 33).

2. The bill cannot be sustained as alleging a cause of action at law for the recovery of the tax paid. Section 3226 of the Revised Statutes prohibits the bringing of suit for the recovery of taxes before the expiration of six months after filing a claim for refund, unless the claim is acted on sooner by the Commissioner. The claim for refund (R. 6) was filed on October 5, 1937, and rejected on December 1, 1937 (R. 29–30); the instant suit was begun on November 8, 1937 (R. 1).

Moreover, the tax here sought to be recovered was collected by the respondent's predecessor in office and suit for its recovery does not lie against the respondent. *Levy* v. *Wardell*, 258 U. S. 542.

3. The District Court was without jurisdiction to grant declaratory judgment as prayed by the petitioner since jurisdiction of suits for declaratory judgment with respect to federal taxes is expressly withheld by Section 274D, Judicial Code (Appendix, *infra*).

CONCLUSION

The decision of the court below is correct, and there is no conflict with other decisions. The petition should be denied.

Respectfully submitted.

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SEPTEMBER 1941.